another "any chose in action, money, goods, wares, chattels, effects, or other valuable thing whatever", nothing being said of obtaining a signature to an instrument, *held,* that fraudulently obtaining a promissory note from the maker thereof comes within the meaning of "valuable thing". *Knepper* v. *People* (Colo. 1917) 167 Pac. 779.

It is a general rule that penal statutes should be construed in favor of the prisoner; but this rule does not require that a fantastic construction should be given which would defeat the real intention of the legislature. A note complete on its face in the hands of the maker is technically speaking no note at all. Norton, Bills & Notes (4th ed.) § 35. It is not an obligation nor a valuable thing. But no sooner is it delivered than it becomes a chose in action and represents a liability against the maker. Furthermore its negotiation to a holder in due course deprives the maker even of the defense of non-delivery. Neg. Instr. Law § 16 (N. Y. § 35). In view of this it has been held that a note obtained by false pretenses from the maker comes within the terms "property", *People* v. *Skidmore* (1899) 123 Cal. 267, 55 Pac. 984; but *cf. People* v. *Cassou* (1915) 27 Cal. App. 23, 148 Pac. 810; *Regina* v. *Danger* (1857) 7 Cox C. C. 303, and "valuable thing". *State* v. *Thatcher* (1872) 35 N. J. L. 445; see *State* v. *Porter* (1881) 75 Mo. 171; *cf. Queen* v. *Gordon* (1889) 23 Q. B. D. 354. Since the substance of the offense consists in obtaining a valuable thing, a distinction ought to be made between negotiable and non-negotiable notes, as an action on the latter will of necessity be subject to an equitable defense. *Robinson* v. *State* (1890) 53 N. J. L. 41, 20 Atl. 753; *contra, State* v. *Porter, supra,* 177. Similarly, the note of an infant maker should not be considered as embraced within any of the foregoing terms. See *Commonwealth* v. *Lancaster* (Mass. 1835) Thach. Cr. Cas. 428. But the fact that the maker is insolvent or the fact that the note has not been negotiated by the prisoner, have properly been deemed insufficient to warrant an acquittal. See *Holton* v. *State* (1899) 109 Ga. 127, 34 S. E. 358. Since the purpose of the statute under consideration is to suppress cheating and discourage the making of false representations, whether or not the prosecutor in fact sustains any pecuniary loss, see *Commonwealth* v. *Ferguson* (1909) 135 Ky. 32, 121 S. W. 967, the interpretation put upon it seems to effectuate it, and a contrary construction would put an artificial restriction upon its operation.

DAMAGES—LIQUIDATED DAMAGES—EFFECT OF DELAY CAUSED BY OWNER IN BUILDING CONTRACT.—A contract provided for the wrecking of a building in 30 days. The architect was empowered to certify an extension of time, on application by the contractor, for delays caused by the owner and certain other causes. There was a delay of 7 days in vacating the building, and the contractor did not complete the wrecking until 37 days thereafter. The contract provided for liquidated damages at $25 a day for each day's delay. *Held,* since the contract provided for an extension of time, the initial delay of the owner did not destroy the provision for liquidated damages; and as no extension had been applied for, plaintiff was entitled to recover for the delay of the contractor. *Trauts Realty Corp.* v. *Casualty Co. of America* (Sup. Ct. App. Term 1917) 166 N. Y. Supp. 807.

Where a contract provides that certain work shall be completed within a stipulated time, and contains a provision for liquidated damages for delay, the obligation is annulled if the owner himself con-

tributes to the delay, and he is limited to actual damages. *Mosler Safe Co.* v. *Maiden Lane Safe Deposit Co.* (1910) 199 N. Y. 479, 93 N. E. 81; *United States* v. *United Eng. Co.* (1914) 234 U. S. 236, 34 Sup. Ct. 843. This is on the theory that the time is set at large by the owner's act; for the prompt performance of the work is the condition on which the contractor's liability depends, and when the obligee himself obstructs the performance of a condition, it is excused. 3 Halsbury, Laws of England, § 511. But the owner generally inserts a provision in the contract giving the architect power to certify an extension of time in certain cases; by virtue of which the effect of a delay caused by the owner operates merely as an extension of the time for performance, and a new time is substituted for the old. *Laidlaw-Dunn-Gordon Co.* v. *United States* (U. S. 1912) 47 Ct. Cl. 271; *Paddock* v. *Stout* (1887) 121 Ill. 571, 578, 13 N. E. 182. The other provisions of the contract remain unaffected, and consequently the builder is liable in liquidated damages, but the period of delay caused by the owner is deducted from the total delay. *Van Buskirk* v. *Board of Education* (1910) 78 N. J. L. 650, 75 Atl. 909; *Cook & Laurie* v. *Denis* (1909) 124 La. 161, 49 So. 1014. Although the courts are not disposed, in the absence of this provision, to apportion the delay when it is caused by both parties, *Jefferson Hotel Co.* v. *Brumbaugh* (C. C. A. 1909) 168 Fed. 867, 874; *Mosler Safe Co.* v. *Maiden Lane Safe Deposit Co., supra* 487, yet if it can be done with reasonable certainty, and the contract provides for allowing extensions, the courts will undertake to do so. *Schmulbach* v. *Caldwell* (C. C. A. 1912) 196 Fed. 16. But in such case the burden of proving for what days credit should be allowed rests on the contractor. *Schmulbach* v. *Caldwell, supra.* In the instant case, the contractor's time for performance was extended 7 days by the delay of the owner, but he was rightly held liable in liquidated damages for his own additional unexcused delay.

EVIDENCE—PHOTOGRAPHS—HYPOTHETICAL SITUATION.—In an action for personal injuries, the defense offered in evidence, in order to prove its theory of the case, several photographs of a man standing in various assumed positions on top of the tank where the plaintiff was injured. *Held,* the evidence was inadmissible. *Colonial Refining Co.* v. *Lathrop* (Okla. 1917) 166 Pac. 747.

Maps, diagrams or photographs are admitted to illustrate the testimony of a witness as aids to the jury in applying the evidence, *State* v. *Hersom* (1897) 90 Me. 273, 38 Atl. 160; *Western Gas Constr. Co.* v. *Danner* (C. C. A. 1899) 97 Fed. 882, their admission for this purpose largely lying within the discretion of the trial court. *Mauch* v. *Hartford* (1901) 112 Wis. 40, 87 N. W. 816. They are also admitted as direct evidence of the facts in issue. *Livermore etc. Co.* v. *Union etc. Co.* (1900) 105 Tenn. 187, 58 S. W. 270; *Louisville & N. R. R.* v. *Brown* (1908) 127 Ky. 732, 106 S. W. 795; see *People* v. *Loper* (1910) 159 Cal. 6, 112 Pac. 720. A photograph itself, however, is a nonentity if it is not vouched for by a witness as a true representation of the conditions portrayed. See *Baustian* v. *Young* (1899) 152 Mo. 317, 53 S. W. 921; 3 Chamberlayne, Evidence, § 1760. Being merely another than verbal expression of somebody's testimony, a photograph will not be admitted if through it a witness testifies to an irrelevant fact, *McClurg* v. *Brenton* (1904) 123 Iowa 368, 98 N. W. 881, and, if the photograph tends to prejudice the interests of one of the parties,